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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 94-201

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. Since the revised statutes following the completion of the 1993 Legislative Session have not yet been published, the statutes cited in the statement of statutory authority and statutes interpreted should indicate that the statutes have been affected by 1993 Wisconsin Act 370.

b. In the first paragraph of the analysis, the reference to “ss. (4) to (11)” should be replaced by a reference to “s. Ind 80.49 (4) to (11).”

c. Since SECTION 1 of the rule order only amends the title to s. Ind 80.49 (1), the text following the treatment clause should read simply: “Ind 80.49 (1) (title) PURPOSE.”

d. SECTION 4 should read:

SECTION 4. Ind 80.49 (4) is renumbered Ind 80.49 (3) and amended to read:

Ind 80.49 (3) (title)....

e. In the treatment clause in SECTION 5, the word “is” should be replaced by the word “are.”

f. In s. Ind 80.49 (4), the definitions should be put into alphabetical order.

g. In s. Ind 80.49 (5) (b) and (c), the notation “subd.” should be replaced by the notation “par.”

h. Section Ind 80.49 (6) (b) 1 contains a typographical error (“as as”). in order to grammatically agree with the introduction in s. Ind 80.49 (6) (b), the subdivision should begin “Certified professional counselor....”

i. In s. Ind 80.49 (6) (e) (intro.), the phrase “this rule” should be replaced by the phrase “this section.”

j. In s. Ind 80.49 (10) (a) 2, the notation “subpar.” should be replaced by the notation “sub.”

k. Section Ind 80.49 (12) provides an effective date provision for the rule-making order. It is unnecessary to include this provision in the text of s. Ind 80.49. Preferably, the effective date provision in the rule-making order could be restated as SECTION 6 of the order.

4. Adequacy of References to Related Statutes, Rules and Forms

Since the rule requires a new or revised form, compliance with s. 227.14 (3), Stats., is required.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section Ind 80.49 (2), as amended, is unclear. Specifically, the last phrase regarding the specialist’s determination should be clarified. Perhaps the phrase “, if that specialist determines that” should be replaced by the word “whether.”

b. Section Ind 80.49 (5) (a) 2 would be clearer if the phrases were reversed to read as follows: “The employee’s average weekly wage for compensation purposes exceeds the average weekly wages of part-time employment, as calculated....”

c. In s. Ind 80.49 (6) (b) 2, reference is made to the “commission on insurance specialists certification.” This entity should be more specifically identified, as should the “commission on rehabilitation specialist certification” in s. Ind 80.49 (6) (b) 3 and the “commission on vocational evaluator certification” in s. Ind 80.49 (6) (b) 4. For clarification, reference to the exception in s. Ind 80.49 (6) (c) should be included in s. Ind 80.49 (6) (b). Also, the titles of the commissions, if used in the rule, should agree with those used in the flexibility analysis prepared by the agency.

d. Section Ind 80.49 (6) (d) provides for a renewal of certification. Presumably, the renewal is valid for three years. This should be clarified. In par. (e) 1, the references to the worker’s compensation act and administrative rules should either be replaced or augmented by appropriate numerical cross-references.

e. In s. Ind 80.49 (7) (b) and (d), it appears that the directions to “immediately mail” or “immediately notify” could be replaced by a specified period of time within which mailing and notification should take place.

f. In s. Ind 80.49 (7) (e), the meaning of “each date of injury” is not clear. The term could be clarified or a definition could be added to the rule.

g. How did the agency determine the \$1,000 maximum for the reasonable cost of services under s. Ind 80.49 (7) (e)? As drafted, the \$1,000 limit only applies to a specialist's services, not to the cost of a training program recommended by the specialist. Is this the intent?

h. In s. Ind 80.49 (8) (intro.), the phrase "under s. 102.61 (1m), Stats.," should be inserted after the phrase "cannot serve the employee."

i. Section Ind 80.49 (9) (c) refers to a statute of limitations contained in s. 102.17 (5), Stats. However, it appears that this section of the statutes does not set a time limit of any kind. This provision of the rule should be clarified.

j. In s. Ind 80.49 (10) (b), is it possible for an employer to "pay...temporary total disability"? Should the reference be to disability "benefits"?

k. Would it be advisable to place a time limit on the offer by an employer of an alternative training program in s. Ind 80.49 (10) (d), such as "within 10 working days" or "within 2 weeks" of the specialist's recommendation?

l. Should the rule be more definite with regard to "reasonable intervals" and "reasonable period of time" in s. Ind 80.49 (11) (b) and (c).

m. Should the rule include an "Applicability Section" to indicate how the new requirements will be implemented? Also, is there a need for a delay in the effective date of the rule to permit certification of specialists by the department?